general creditors. *Taussig* v. *Carnegie Trust Co.*, 49 N. Y. L. J. 913 (N. Y. App. Div., April, 1913).

Money deposited in a bank is presumed to create the relation of debtor and creditor, and a trust fund cannot be made out unless there are special circumstances to show that the parties expressly intended thus to limit the deposit. *McGregor* v. *Battle*, 128 Ga. 577, 58 S. E. 28. The principal case seems clearly right, for nothing appears in the agreement to indicate that the bank was not at liberty to mingle the salary payments with its own funds as fast as they were deposited, and there can therefore be no specific trust *res*. *Kuehne* v. *Union Trust Co.*, 133 Mich. 602, 95 N. W. 715. On the general question of distinguishing between trust funds and general deposits, see 12 HARV. L. REV. 221; 16 HARV. L. REV. 228; 25 HARV. L. REV. 558.

BOOK REVIEWS.

DAS PROBLEM DES NATÜRLICHEN RECHTS. By Erich Jung, Professor in the University of Strassburg. Leipzig: Duncker and Humblot. 1912. pp. iv, 334.

A few years ago, nothing seemed to be so dead as "natural law." It seemed to be agreed that attempts to work out jural ideals were quite futile, except as analysis, comparative law, and legal history might be made to yield criteria by which particular rules might be measured in order to make the law more systematic and logically consistent. In truth, in the nineteenth century "natural law" was an exotic. The watchwords of the time were certainty and security. The legal institutions of the time, to which jurists sought to assimilate all things, were property and contract. It was a period not of growth but of maturity, and such periods have little use for philosophy.

To-day a movement is in progress which is very like the transition from the stage of strict law to that of equity in the *jus gentium* and in the rise of the court of chancery. Indeed the analogy to the latter is especially noteworthy. The strict law took no account of the moral aspect of conduct. In its zeal for certainty and uniformity it became so wholly unmoral that a sixteenth-century serjeant at law could gravely inform us that it was contrary to the law of God that a specialty creditor who had been paid but who had not given a release under seal should be precluded from exacting payment a second time. In like manner, in its zeal for security of acquisitions and security of transactions, the law of the nineteenth century came almost to ignore the moral worth of the individual. An infusion of moral ideas from without the law proved the remedy in the former case. In the latter, a like infusion of social ideas from without is evidently to be the remedy. But, what is more significant for the present purpose, when jurists come to be affected by the movement, they have recourse once more to the phrase "natural law," which has done duty twice before in legal history under like circumstances. Accordingly we have a revival of natural law in France, and now Germans, who but the other day were speaking scornfully of *das selige Naturrecht* are devoting elaborate treatises to the problem of jural ideals. A constructive period is at hand, the analytical and historical methods, which suffice for a period of maturity and stability, fail to satisfy, and the old attempts to construct an ideal law suggest that we may at least work out the ideals of the time and place and thereby provide a better critique of rules and doctrines and a surer basis for their development whether by judicial experience or by legislation.

For the most part Professor Jung's book has to do with problems connected with the Continental codes. At first these problems would seem to have little direct or immediate interest for the American lawyer. Except to some extent

in applying our bills of rights, we are not called upon to devise theories of interpretation which will enable the law to grow although tied to authoritative texts. Our task is rather to work out means of developing our received tradition along new lines. But the immediate agency of growth in each case is to be judicial empiricism. This goes without saying in our law, and recent continental writing indicates clearly enough that it will be true substantially for the rest of the world.

In other periods of growth, the chief force has been the attempt of jurists to make law conform to certain ideals. If in the past the mistake has been made of trying to discover universal ideals, valid for all men, in all times, at all places, yet in practice these ideals have proved to be ideals of the epoch and of the locality. They have failed to maintain themselves for the very reason that made them valuable. Purporting to be absolute and universal, they have been relative and even provincial. Hence the easy victory of the historical school, in overthrowing the notion of an absolute natural law, has proved short lived. The attempt to make the law conform to ideals provided a healthy critique for which analysis and history have not been able to afford a substitute.

If judicial empiricism may be guided consciously by philosophical statement of the ends to be reached and a critical study of the judicial sense of right as a source of law, a science of judicial law making may be attained which is of much more practical importance in a period of legal growth than the science of legislative law making, to which we are coming to give so much attention. The reshaping of the traditional element of our law demands some such science, and we cannot be content much longer with theories of law making which neglect the principles and ideals which should govern in shaping the most significant and most enduring portions of the legal system. Professor Jung, therefore, is dealing, from a continental standpoint, with problems with which we also must wrestle. The thoughtful student of American law, and above all the American teacher of law, in whose work, as Professor Williston has shown, ideals of law are especially important, cannot fail to read such a book with profit.

R. P.

A DIGEST OF EQUITY. By J. Andrew Strahan and G. H. B. Kenrick. Third Edition, by J. Andrew Strahan, assisted by C. H. Castor. London: Butterworth & Co. 1913. pp. liv, 562, and 33 (index).

It is something of an undertaking to set forth in an octavo volume of less than six hundred pages the English law on the various subjects included under the head of Equity. Mr. Strahan and Mr. Kenrick, however, have produced such a treatise and one which cannot fail to give the student, for whose use it is primarily intended, a real conception of the system of Equity as administered in the English courts to-day. The statements of the leading principles, which are printed in large type, show a talent for isolating the fundamental. The illustrative cases, about thirteen hundred in number, are well selected and discussed with discrimination.

In dealing with the subject of Trusts, which occupies nearly a third of the book, the authors wisely refrain from attempting to define a trust, but an attentive reader will grasp its real nature and characteristics. It does not seem, however, that the classification of Trusts is altogether fortunate; while the reader will understand what is meant by Declared and Constructive Trusts, the scope of Presumed Trusts is not so evident. The statement (p. 203) that "owing to the decision that trusts in land do not arise by operation of law on the transfer of the land to a person who gives no value, if such a trust is intended it must be evidenced by writing," seems to be misleading as a statement of the English law, in view of the decision of *In re* Duke of Marlborough, [1894] 2 Ch. 133 and the cases there cited. The statement of the doctrine of Subroga-